

the parties hereby stipulate to and petition the court to enter the following Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. As set forth in Section 14.4 below, the parties acknowledge that this Protective Order does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a

consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely sensitive “Confidential Information or Items” representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.16 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
2 CONFIDENTIAL – SOURCE CODE.”

3 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
4 Producing Party.

5 3. SCOPE

6 The protections conferred by this Order cover not only Protected Material (as defined above),
7 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
8 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
9 presentations by Parties or their Counsel that might reveal Protected Material. However, the
10 protections conferred by this Order do not cover the following information: (a) any information that
11 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
12 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of
13 this Order, including becoming part of the public record through trial or otherwise; and (b) any
14 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
15 after the disclosure from a source who obtained the information lawfully and under no obligation of
16 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
17 separate agreement or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations imposed by this
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
21 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
22 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
23 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
24 time limits for filing any motions or applications for extension of time pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
27 Non-Party that designates information or items for protection under this Order must take care to
28 limit any such designation to specific material that qualifies under the appropriate standards.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected material.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE") to each page that contains Protected Material.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the

Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order and shall return or destroy, at the Designating Party’s option, all qualified information or items that were not properly designated.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it

1 has engaged in this meet and confer process first or establishes that the Designating Party is
 2 unwilling to participate in the meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
 5 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
 6 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
 7 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
 8 competent declaration affirming that the movant has complied with the meet and confer
 9 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
 10 motion including the required declaration within 21 days (or 14 days, if applicable) shall
 11 automatically waive the confidentiality designation for each challenged designation. In addition, the
 12 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
 13 good cause for doing so, including a challenge to the designation of a deposition transcript or any
 14 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
 15 competent declaration affirming that the movant has complied with the meet and confer
 16 requirements imposed by the preceding paragraph.

17 The burden of persuasion in any such challenge proceeding shall be on the Designating
 18 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 19 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 20 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
 21 retain confidentiality as described above, all parties shall continue to afford the material in question
 22 the level of protection to which it is entitled under the Producing Party's designation until the court
 23 rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 26 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 27 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 28 the categories of persons and under the conditions described in this Order. When the litigation has

1 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in a
4 secure manner that ensures that access is limited to the persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
6 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
9 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
10 this litigation;

11 (b) the officers, directors, and employees (including House Counsel) of the Receiving
12 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A); in no event shall such persons allowed
14 disclosure pursuant to this paragraph exceed three persons, unless agreed to in writing by the
15 Disclosing Party;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
17 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
18 to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
25 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
27 bound by the court reporter and may not be disclosed to anyone except as permitted under this
28 Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) other persons whom the Disclosing Party agrees in writing may view the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed. The Disclosing Party may agree in writing that specific Designated House Counsel may view certain identified HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information or items, regardless of whether that Designated House Counsel has involvement in competitive decision-making;¹

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or

¹ This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 other person who otherwise possessed or knew the information;

2 (g) other persons whom the Disclosing Party agrees in writing may view the information.

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
 4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
 5 Items to Designated House Counsel or Experts.

6 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
 7 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has
 8 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
 9 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full
 10 name of the Designated House Counsel and the city and state of his or her residence and (2)
 11 describes the Designated House Counsel’s current and reasonably foreseeable future primary job
 12 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
 13 become involved, in any competitive decision-making.

14 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
 15 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
 16 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 17 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a
 18 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
 19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 20 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
 21 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a
 22 copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies
 23 each person or entity from whom the Expert has received compensation or funding for work in his or
 24 her areas of expertise or to whom the expert has provided professional services, including in
 25 connection with a litigation, at any time during the preceding five years,² and (6) identifies (by name

26 _____
 27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 28 party, then the Expert should provide whatever information the Expert believes can be disclosed
 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who reviews or otherwise gains knowledge of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" technical information or "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall not be involved

1 in the prosecution of patents or patent applications relating to the subject matter of the patents-in-suit
 2 as well as the subject matter of the Protected Material received, including without limitation the
 3 patents asserted in this action and any patent or application claiming priority to or otherwise related
 4 to the patents asserted in this action, before any foreign or domestic agency, including the United
 5 States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph,
 6 “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the
 7 scope or maintenance of patent claims in any ex parte proceeding, including original prosecution.³
 8 To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party
 9 challenging or defending a patent in any contested proceeding before a domestic or foreign agency
 10 (including, but not limited to, a reissue protest, interference, post grant review, or *inter partes*
 11 reexamination or review), provided that any individual who reviews or otherwise gains knowledge
 12 of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” technical information or
 13 “HIGHLY CONFIDENTIAL – SOURCE CODE” information shall not be involved, either directly
 14 or indirectly, in amending claims. This Prosecution Bar shall begin when the affected individual
 15 first reviews or otherwise gains knowledge of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 16 ONLY” technical information or “HIGHLY CONFIDENTIAL – SOURCE CODE” and shall end
 17 two (2) years after final termination of this action.

18 9. SOURCE CODE

19 (a) To the extent production of source code becomes necessary in this case, a Producing
 20 Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it
 21 comprises or includes confidential, proprietary or trade secret source code.

22 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
 23 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’
 24 EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8, and may be
 25 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 26 ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of
 27 Designated House Counsel.

28 ³ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 (c) Any source code produced in discovery shall be made available for inspection, in a
2 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
3 mutually agreeable times, at an office of the Producing Party's counsel or another mutually agreed
4 upon location. The Receiving Party shall give reasonable notice, of no less than three business days,
5 to the Producing Party of the dates that it is planning to review source code and the names of
6 individuals who will review the source code. The Producing Party shall not unreasonably restrict
7 access to such review. The source code shall be made available for inspection on a secured
8 computer in a secured room without Internet access or network access to other computers, and the
9 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto
10 any recordable media or recordable device. The Producing Party may visually monitor the activities
11 of the Receiving Party's representatives during any source code review, but only to ensure that there
12 is no unauthorized recording, copying, or transmission of the source code. Electronic devices,
13 including cell phones and laptops, and devices capable of copying, photographing, or recording
14 (including cell phones) are not permitted to be brought by reviewers into the source code review
15 room. Notes may only be taken in bound notebooks that prominently contain a legend on the cover
16 identifying the case name, number, note taker's contact information, and the phrase "HIGHLY
17 CONFIDENTIAL."

18 (d) The Receiving Party may request paper copies of limited portions of source code that
19 are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other
20 papers, or for deposition or trial, but shall not request paper copies for the purpose of reviewing the
21 source code other than electronically as set forth in paragraph (c) in the first instance. The Producing
22 Party shall provide all such source code in paper form, including bates numbers and the label
23 "HIGHLY CONFIDENTIAL – SOURCE CODE." The Producing Party may challenge the amount
24 of source code requested in hard copy form pursuant to the dispute resolution procedure and
25 timeframes set forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the
26 Receiving Party is the "Designating Party" for purposes of dispute resolution. Requests for paper
27 copies that exceed 20 consecutive printed pages, or that cumulatively exceed 150 printed pages, shall
28 be presumed to be unreasonable. If the Receiving Party finds these default limits insufficient, it may

1 make individual requests that exceed these limits, to which the Producing Party may agree at its
2 discretion, but in no event should requests exceed 30 consecutive printed pages or cumulatively
3 exceed 250 printed pages. These limits may be amended by agreement of the Parties.

4 (e) The Receiving Party shall maintain a record of any individual who has inspected any
5 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
6 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall
7 not create any electronic or other images of the paper copies and shall not convert any of the
8 information contained in the paper copies into any electronic format. The Receiving Party shall only
9 make additional paper copies if such additional copies are (1) necessary to prepare court filings,
10 pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition,
11 or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition
12 shall be retrieved by the Producing Party at the end of each day and must not be given to or left with
13 a court reporter or any other unauthorized individual.

14 (f) The Producing Party shall pre-install tools to permit reasonable review of the
15 Producing Party's source code. To the extent the Receiving Party requests additional source code
16 review tools, the Receiving Party shall inform the Producing Party of those additional tools at least
17 14 days prior to the date such source code review tools are requested to be installed, and the
18 Receiving Party shall provide any necessary licenses. The Receiving Party shall not erase, load,
19 install, compile, or otherwise modify any program (or request that the Producing Party do so) on the
20 source code review computer without first submitting a written request and obtaining the Producing
21 Party's agreement to that request.

22 (g) Upon final disposition of this action as set forth in Paragraph 15, the Producing Party
23 may request service of: (1) the record of all paper copies of source code made by the Receiving
24 Party; (2) the record of individuals who inspected any portion of the source code; and (3) a
25 certification in writing that all copies of source code, including any materials containing source code
26 information, including source code reviewer notes, were destroyed. Alternatively, the Producing
27 Party may request that all copies of source code be returned.
28

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.⁴

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’

⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by
 2 Non-Parties in connection with this litigation is protected by the remedies and relief provided by this
 3 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
 4 additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 6 Party’s confidential information in its possession, and the Party is subject to an agreement with the
 7 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

- 8 1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the
 9 information requested is subject to a confidentiality agreement with a Non-Party;
- 10 2. promptly provide the Non-Party with a copy of the Protective Order in this litigation, the
 11 relevant discovery request(s), and a reasonably specific description of the information requested; and
- 12 3. make the information requested available for inspection by the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court within 14
 14 days of receiving the notice and accompanying information, the Receiving Party may produce the
 15 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
 16 seeks a protective order, the Receiving Party shall not produce any information in its possession or
 17 control that is subject to the confidentiality agreement with the Non-Party before a determination by
 18 the court.⁵ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
 19 seeking protection in this court of its Protected Material.

20 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 22 Material to any person or in any circumstance not authorized under this Protective Order, the
 23 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 24 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
 25 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 26 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to

27 ⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party
 28 and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Be Bound” that is attached hereto as Exhibit A.

2 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
3 MATERIAL

4 The production of any privileged or otherwise protected or exempted information, as well as
5 the production of information without an appropriate designation of confidentiality, shall not be
6 deemed a waiver or impairment of any claim of privilege or protection, including, but not limited to,
7 the attorney-client privilege, the protection afforded to work product materials or the subject matter
8 thereof, or the confidential nature of any such information, as to the produced information, or any
9 other information in this case or in any other federal or state proceeding.

10 Pursuant to Federal Rule of Evidence 502(d) and Federal Rule of Civil Procedure 26(b)(5),
11 the production of documents, electronically stored information (“ESI”) or information subject to the
12 attorney-client privilege or the work-product immunity, or any other privilege or immunity, whether
13 inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or
14 in any other federal or state proceeding. This Order shall be interpreted to provide the maximum
15 protection allowed by Federal Rule of Evidence 502(d).

16 If information is produced in discovery that is subject to a claim of privilege, work-product
17 immunity, or other privilege or immunity, the Producing Party making the claim may notify any
18 Receiving Party of the claim and the basis for it. Within 10 days of such notification, a Receiving
19 Party must return the specified information and any copies it has or provide a signed verification
20 certifying that all such information and copies have been destroyed. Moreover, any notes or
21 summaries, other than those previously permitted under this section, referring to or relating to any
22 recalled documents or information subject to a claim of privilege or immunity, shall be destroyed.

23 The Receiving Party may contest the privilege or work product designation by the Producing
24 Party, and shall give the Producing Party written notice of the reason for said disagreement.
25 However, the Receiving Party may not challenge the privilege or immunity claim by arguing that the
26 disclosure itself is a waiver of any applicable privilege. The Receiving Party shall be entitled to
27 retain one copy of the disputed document solely for use in resolving any such dispute, and such
28

document may not be used for any other purpose. If the Receiving Party contests the privilege or work product designation, that party shall, following a voice to voice meet and confer between the parties and within 14 days from the initial notice by the Producing Party, seek an Order from the Court compelling the continued production of the material. If no such Order is sought, upon expiration of the 14-day period, then all copies of the disputed document shall be returned or destroyed in accordance with this section.

Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and regulations relating to the export of technical data contained in such Protected Material, including the release of such technical data to foreign persons or nationals in the United States or elsewhere. The Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving Party shall take measures necessary to ensure compliance.

14.4 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to

1 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
 2 to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected
 3 Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by
 4 the court.

5 15. FINAL DISPOSITION

6 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 7 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
 8 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 9 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
 10 the Protected Material is returned or destroyed, the Receiving Party must submit a written
 11 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
 12 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
 13 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
 14 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
 15 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
 16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
 18 and expert work product, even if such materials contain Protected Material. Any such archival copies
 19 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
 20 Section 4 (DURATION).

21 Dated: July 10, 2018

22 By: /s/ Irene Yang
 Irene Yang

23 Attorneys for Plaintiff MAGENTO, INC.

24 Dated: July 10, 2018

25 By: /s/ Timothy Devlin
 Timothy Devlin

26 Attorneys for Defendant EXPRESS MOBILE, INC.

ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatory above.

Dated: July 10, 2018

By: /s/ Irene Yang
Irene Yang

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 7/13/18



Honorable Richard Seeborg
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *X.Commerce, Inc. d/b/a Magento, Inc. v. Express Mobile, Inc.*, Case No. 3:17-cv-02605-RS. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]